

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
21.01.2020	17.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.18787 of 2015

R.Murugan
S/o.Late.Rathinam,
No.38 Kamaraj Nagar, Kachipet,
Sriperumbudur Kanchipuram District ... PETITIONER

Vs.

The Deputy Director of Public Health
and Preventive Medicine
Institute of Public Health,
Poonamallee, Chennai-56 ... RESPONDENT

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the respondents termination order under reference Na.Ka. No.7856/ P.Tho2/1998 dated 15.6.2015 and to quash the same as illegal and invalid and consequently direct the respondent to forthwith reinstate the petitioner in service as a Mazdoor in the respondent Department along with all attendant and monetary benefits and continuity of service and also regularize the petitioner's service.

For Petitioner : Mr.B.Balachander

For Respondent : Mr.J.Ramesh, A.G.P.

ORDER

Challenge in the writ petition is against the order passed by the respondent, dated 15.6.2015 terminating the service of the petitioner as Mazdoor in the respondent department stating that the appointment of the petitioner is contrary to Rule since application under compassionate ground should be submitted within a period of three years from the date of death of the Government servant, whereas the petitioner applied for the said post after the lapse of 23 years and

therefore, the impugned order has been passed by the respondent.

2. The case of the petitioner in brief is as follows:
The petitioner's father was working in the respondent department as Mason cum Maistry and passed away on 19.5.1975, while in service leaving behind him, his wife, petitioner, brother and two sisters. After the death of his father, the petitioner's mother sent representations, dated 16.9.1998, 30.5.2001 and 23.3.2006 and on 17.11.2006, the petitioner was offered Mazdoor post in the respondent department on compassionate ground. All of a sudden on 3.6.2015, the respondent passed the impugned order terminating the service of the petitioner.

3. The learned counsel appearing for the petitioner submitted that no enquiry was conducted before passing the impugned order and thereby, the respondent violated the basic principles of natural justice. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in UNION OF INDIA AND OTHERS VS. K.P.TIWARI [(2003) 9 SCC 129] and decision of this Court in S.VAIKUNDAM VS. STATE OF TAMIL NADU, REP. BY THE PRINCIPAL COMMISSIONER AND COMMISSIONER FOR REVENUE ADMINISTRATION, CHENNAI [(2012) 4 MLJ 728], S.RAJKUMAR VS. CHAIRMAN, TAMIL NADU ELECTRICITY BOARD, CHENNAI AND OTHERS [(2008) 3 MLJ].

4. Counter affidavit has been filed by the respondent wherein it is stated as under:

The averment made by the petitioner that the petitioner is living in a cosmopolitan city is not true, petitioner is residing at Kachipt which is only a rural area and the allegation that the petitioner's mother made repeated representations are also not true. The petitioner was offered 'Mazdoor' post on 17.11.2006. In the appointment order itself, it was clearly stated that the petitioner is being given employment only on temporary basis and he cannot claim any right on the basis of the said employment and the petitioner could be ousted from service on any day without notice. The petitioner's service was not regularised. Petitioner submitted a reply, dated 11.6.2015 to the show cause notice, dated 3.6.2015. The documents referred to in the show cause notice are all available with the petitioner and therefore, no prejudice has been caused to the petitioner by not furnishing the said documents. As G.O.Ms.No.120, dated 26.6.1995 of Government of Tamilnadu, compassionate appointment can be granted only within a period of three years from the date of death of the deceased employee. The request for compassionate appointment was also made only in the year 1998, i.e. 23 years after the death of the petitioner's father. The decision of the Government was communicated to the respondent, vide letter in R.No.14635/AB-1/2014-1 of Public

Health and Family Welfare department refusing to ratify the appointment of the petitioner.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the sole respondent and perused the materials available on record.

6. According to the learned counsel appearing for the petitioner, the respondent ought to have examined the application of the petitioner at the time of appointment itself. The petitioner has served 9 long years of unblemished service. At this juncture, the respondent passed the impugned order terminating the service of the petitioner. According to the learned Additional Government Pleader, the petitioner was appointed only on temporary basis and he cannot claim any right over the said employment and his service was not regularised as on date. The appointment of the petitioner is illegal and therefore, the impugned order has been passed and the same is sustainable in law.

7. The appointment of the petitioner was made under the Scheme of Compassionate appointment. The Scheme, being a concession, can never be claimed as a matter of right and the eligible person should apply for employment on compassionate ground within a stipulated period of three years. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession given to the bereaved family just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner and it cannot be claimed as a matter of right by the applicant to be enforced through a writ proceeding. Further, the petitioner is debarred from seeking compassionate appointment on the ground of delay as well as in the light of the decision rendered by the Hon'ble Supreme Court in the case of State of Himachal Pradesh and another V. Shashi Kumar reported in (2019) 3 Supreme Court Cases 652. The relevant paragraphs of the said decision read as under:

"35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this

Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including *State of J & K Vs. Sajad Ahmed Mir* and *Local Administration Department Vs. M. Selvanayagam*.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

8. The reason behind giving compassionate appointment to the bereaved family is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. In the present case on hand, father of the petitioner died in the year 1975 and the request for compassionate appointment was also made in the year 1998, i.e. 23 years after the death of the father and therefore, the Government refused to ratify the appointment of the petitioner vide letter, dated 8.8.2014 in R.No.14635/AB-1/2014-1 of Public Health and Family Welfare department.

9. The authority who is responsible for the appointment of the petitioner has not followed the guidelines or instructions issued by the Government in number of Government orders for appointment under compassionate ground. The application for appointment under compassionate ground has been

made by the petitioner's mother in 2006 and the same was entertained by the authority concerned contrary to the guidelines issued by the Government from time to time in number of Government orders and also the decision of this Court as well as the Hon'ble Supreme Court. Therefore, this Court come to the conclusion that the appointment is per se illegal. The authorities concerned must scrupulously follow the Government order while making appointment under compassionate ground. Therefore, the Government has to issue appropriate instructions to the authorities concerned to strictly follow the comprehensive guidelines issued by the Government vide G.O.Ms.No.18, dated 23.01.2020. If any deviation, the department shall take action against the concerned officer for violation of the guidelines issued by the Government in the aforesaid G.O.

10 In view of the aforesaid decision rendered by the Hon'ble Supreme Court, this Court finds no reason to interfere with the impugned order of the first respondent.

11. Accordingly, the writ petition stands dismissed with the above observations. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Director of Public Health and Preventive Medicine
Institute of Public Health, Poonamallee, Chennai-56

W.P.No.18787 of 2015

SVI (CO)
GN(30/07/2020)

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